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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11 JOHN PRUTSMAN, AMIRA MARTZ,
12 SIMCHA RINGEL, NAIOMI MARDEN,
ALANA BALAGOT, CORINNE
13 WARREN, SUNNY LAI, AND DAVID
KLEIN, individually and on behalf of all
14 others similarly situated,

15 Plaintiffs,

16 v.

17 NONSTOP ADMINISTRATION AND
INSURANCE SERVICES, INC., Inclusive,

18 Defendant.
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CASE NO. 3:23-CV-01131-RFL

JOINT CASE MANAGEMENT STATEMENT

Judge Hon. Rita Lin

Pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure and Northern District of California Civil Local Rule 16-9, Plaintiffs John Prutsman, Amira Martz, Simcha Ringel, Naiomi Marden, Alana Balagot, Sunny Lai, Corinne Warren and David Klein (collectively, “Plaintiffs”) and Defendant Nonstop Administration and Insurance Services, Inc. (“Defendant”) jointly submit this Case Management Statement and discovery plan in advance of this Court issuing a new Case Management Order, per the new assignment to the Honorable Rita Lin.

1. JURISDICTION AND SERVICE

JOINT POSITION

The Parties contend that jurisdiction is proper under 28 U.S.C. §1332(d) and 28 U.S.C. § 1367. The Parties also contend that the Court’s exercise of personal jurisdiction over Defendant is proper, as Defendant maintains its principal place of business within this District. Supplemental jurisdiction to adjudicate issues pertaining to state law is proper in this Court under 28 U.S.C. § 1367. Venue is proper in this Court under 28 U.S.C. § 1391 and Local Rule 3-2(c). No issues exist regarding personal jurisdiction or venue. By Order of Court, Plaintiffs filed a Consolidated Class Action Complaint (“CAC”) on May 25, 2023.

2. FACTS

PLAINTIFFS’ POSITION

Defendant Nonstop is a privately held employee health insurance and benefits broker and as a necessary part of its regular business activities, Defendant collects and maintains sensitive consumer information, including personally identifiable information (“PII”) and protected health information (“PHI”). On December 22, 2022, Defendant learned that a third party had accessed the network in which it stored the PII and PHI of consumers nationwide and exfiltrated the data stored within (the “Data Breach”). The information compromised in the Data Breach included names, dates of birth, physical and email addresses, telephone numbers, Social Security numbers, medical treatment/diagnosis information and health insurance providers, and claims and billing

1 information (the “Private Information”). Following the Data Breach, a hacking forum reported that
2 45,532 lines of data stolen from Defendant were posted online by cybercriminals to demonstrate
3 they had successfully exfiltrated data from Defendant’s network. Plaintiffs were among the
4 individuals whose data was accessed in the Data Breach. Plaintiffs began receiving notice of the
5 Data Breach beginning in February and March of 2023.

6 Plaintiffs allege that Defendant was aware of the threat of cyberattacks designed to gain
7 access to personal information, yet it failed to properly implement and maintain adequate data
8 security policies and procedures. Plaintiffs further allege that, Defendant had a duty under common
9 law and state and federal statutes to implement reasonable safeguards but failed to adhere to that
10 duty, and that Defendant failed to promptly and adequately notice Plaintiffs and Class Members
11 of the Data Breach. Plaintiffs allege that as a result of the Data Breach, they experienced fraudulent
12 transactions, attempts by cybercriminals to open accounts using their information, drops in their
13 credit score, lost time mitigating the consequences of the Data Breach, their Private Information
14 being published on the dark web, and a corresponding invasion of their privacy and property rights.

15 **DEFENDANT’S POSITION**

16 On December 22, 2022, Nonstop Administration and Insurance Services (“Nonstop”) received an anonymous email from a threat actor. The unknown actor claimed that he had gained
17 access to Nonstop’s information systems and stolen an unspecified amount of data. Nonstop
18 immediately launched an investigation with the assistance of counsel and independent digital
19 forensic specialists. Nonstop’s investigation of the breach and subsequent review of data was
20 completed on January 30, 2023. On February 3, 2023, Nonstop announced the breach on its
21 website. On the same date, Nonstop notified all relevant employer groups of the breach. Individual
22 consumers were notified on February 15, 2023.

23 At the time of the breach, Nonstop had comprehensive security policies and procedures.
24 All sensitive information was encrypted at rest and subject to endpoint detection and response with
25 full audit logs. Nonstop also participated in annual audits; the most recent of which occurred in
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June of 2022. The audit made recommendations for improvements, the only recommendation of which possibly relates to Nonstop is more frequent rotation of keys. Nonstop was in the process of implementing all recommendations at the time of the breach. Since the occurrence of the breach, Nonstop has further enhanced its security. Nonstop has retired its previous NSE production environment. Nonstop has rotated its database, cloud services, and access keys and forced password resets for internal Google access. Nonstop has implemented active security monitoring across all relevant accounts and networks. Nonstop has further created a new NSE administrative environment in a separate AWS account and implemented a Web Application Firewall on said environment and limited access exclusively to its corporate VPN; this VPN may only be accessed on company-owned machines. Nonstop uses new frameworks for securing application secrets and is rewriting applications to use password-less frameworks for database access. Moreover, Nonstop is refactoring document storage to preserve encryption at rest as well as during transport.

3. LEGAL ISSUES

PLAINTIFFS' POSITION

Plaintiffs believe the key legal issues include:

- Whether Defendant had a legal duty to Plaintiffs and the Class to exercise due care in collecting, storing, using and/or safeguarding their PHI/PII;
- Whether Defendant knew or should have known of the susceptibility of its data security systems to a data breach;
- Whether Defendant's security procedures and practices to protect its systems were reasonable in light of the measures recommended by data security experts;
- Whether Defendant's failure to implement adequate data security measures allowed the Data Breach to occur;
- Whether Defendant failed to comply with its own policies, applicable laws regulations, and industry standards relating to data security;

- Whether Defendant adequately, promptly and accurately informed Plaintiffs and Class Members that their PHI/PII had been compromised;
- How and when Defendant actually learned of the Data Breach;
- Whether Defendant's conduct, including its failure to act, resulted in or was the proximate cause of the breach of its systems, resulting in the loss of the PHI/PII of Plaintiffs and Class Members;
- Whether Defendant adequately addressed and fixed the vulnerabilities which permitted the Data Breach to occur; and
- Whether Defendant engaged in unfair, unlawful or deceptive practices by failing to safeguard the PHI/PII of Plaintiffs and Class Members.

DEFENDANT'S POSITION

Nonstop denies any and all allegations in the CAC, as at all relevant times, Nonstop had reasonable security measures in place and was a victim of a criminal act by a threat actor, who is awaiting sentencing for his actions. Defendant Conor Brian Fitzpatrick has been joined as a Defendant in this matter on November 22, 2023. Service was successfully effectuated on his on November 23, 2023.

At all times, to the extent that Nonstop owed any statutory, contractual, or common law duties to Plaintiffs, Nonstop acted in accordance with all such duties. At the time of the purported breach, Nonstop employed reasonable security policies, procedures, and controls in accordance with industry standards. Plaintiffs will further be unable to prove any discernible damages proximately caused by any act or omission of Nonstop. Finally, the security policies and controls put in place at Nonstop subsequent to the subject incident are far above and beyond industry standards and common practices.

Each Party reserves the right to supplement this list.

1 **4. MOTIONS**

2 On March 29, 2023, Plaintiffs John Prutsman and Sonny Lai filed an Administrative
3 Motion to Consider Whether Cases Should Be Related and stipulated to relate *John Prutsman v.*
4 *Nonstop Administration and Insurance Services, Inc.*, Case No. 3:23-cv-01131 (filed March 13,
5 2023) (“*Prutsman*”) and *Sunny Lai v. Nonstop Administration and Insurance Services, Inc.*, Case
6 No. 3:23-cv-01323-LB (filed March 21, 2023) (“*Lai*”). Plaintiffs Prutsman and Lai also jointly
7 moved the Court for an Order consolidating the cases and appointing as interim lead counsel Gary
8 M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and Scott Edward Cole of Cole
9 & Van Note. ECF No. 11. On May 4, 2023, the Court granted the motion to consolidate and
10 appointed lead counsel and ordered *Lai* and *Warren* consolidated into *Prutsman*, the first filed
11 case. ECF Nos. 25-26.

12 On May 9, 2023, the Parties stipulated that Plaintiffs would file a Consolidated and
13 Amended Complaint no later than May 25, 2023 and Defendant would file any response thereto
14 on or before June 15, 2023. ECF No. 27. The Parties further agreed that, if warranted, Plaintiffs
15 would respond in opposition by July 20, 2023, and oral argument would be heard on July 27, 2023.
16 ECF No. 27. Plaintiffs filed their Consolidated and Amended Complaint on May 25, 2023 and
17 Defendant filed its Motion to Dismiss the Complaint on June 15, 2023. ECF Nos. 38-39. Plaintiffs
18 responded with their Opposition filed on July 6, 2023. ECF No. 41

19 On July 7, 2023, Defendant filed a Notice of Removal for *Nicholson v. Nonstop*
20 *Administration and Insurance Services*. ECF. 42. Additionally, Defendant filed its Reply in
21 Support of the Motion to Dismiss on July 13, 2023. ECF. 43

22 As discussed below, the parties will meet and confer about electronically stored
23 information (“ESI”), including the appropriate scope of preservation for ESI, and will submit a
24 stipulation on the subject.

1 Documents. The Parties intend to continue to engage in discovery, upon execution of a Protective
2 Order, and upon approval of said Protective Order by this Court.

3 **PLAINTIFFS' POSITION**

4 Plaintiffs believe that a longer discovery phase than that contemplated by the Court's
5 Standing Order for Civil Cases is warranted here as data breach cases involve intensive expert
6 investigation and iterative discovery efforts. Plaintiffs anticipate that the scope of discovery will
7 include (i) the nature and scope of the Data Breach, (ii) efforts to prevent or contain the Data
8 Breach or similar cyber intrusions, (iii) how the Data Breach occurred, (iv) persons and entities
9 who could have prevented the Data Breach and Defendant's data security practices and training
10 regimen, (v) the investigation of and response to the Data Breach, (vi) the victims of the Data
11 Breach and (vii) the distribution of Data Breach victims' Private Information on the dark web and
12 other criminal marketplaces.

13 **DEFENDANT'S POSITION**

14 Discovery has commenced. Defendant requests a longer discovery phase than that
15 contemplated by the Court's Standing Order for Civil Cases is warranted here as data breach cases
16 involve intensive expert investigation and iterative discovery efforts. Defendant anticipates that
17 the scope of discovery will include (i) the nature and scope of the Data Breach, (ii) efforts to
18 prevent or contain the Data Breach or similar cyber intrusions, (iii) how the Data Breach occurred,
19 (iv) Defendant's reasonable data security practices and training regimen, (v) the investigation of
20 and response to the Data Breach, (vi) the victims of the Data Breach, including any and all
21 purported damages alleged, including, but not limited to steps taken to monitor personal
22 information, medical history and records of anxiety and stress before and subsequently cause by
23 the breach and (vii) expert reports and depositions as to negligence, causation, and damages.

24 At this time, the Parties believe the default discovery limitations under the Federal Rules
25 of Civil Procedure suffice but reserve the right to request additional discovery as needed.

1 The Parties will meet and confer over the form of a proposed stipulated protective order
 2 and proposed stipulated ESI protocol. The Parties do not anticipate any disputed issues involving
 3 ESI but will meet and confer should the production of electronic data, or the method of such
 4 production, become issues. Parties agree to meet and confer about rolling discovery of ESI, over
 5 the course of discovery.

6 **9. CLASS ACTIONS**

7 **PLAINTIFFS' POSITION**

8 Plaintiffs bring this action pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of
 9 Civil Procedure on behalf of themselves and a nationwide class of similarly situated individuals.
 10 Plaintiffs also seek to represent state subclasses on behalf of residents of Alaska, California,
 11 Colorado and New York. Plaintiffs intend to seek class certification after the completion of
 12 necessary fact and expert discovery.

13 **DEFENDANT'S POSITION**

14 Nonstop intends to oppose class certification at the appropriate time. The Parties have
 15 proposed a schedule for briefing class certification below in Section 16.

16 The Parties have reviewed and are familiar with this District's Procedural Guidance for
 17 Class Action Settlements.

18 **10. RELATED CASES**

19 None at this time.

20 **11. RELIEF**

21 **PLAINTIFFS' POSITION**

22 Plaintiffs, on behalf of themselves and the Class and Subclasses, seek declaratory and
 23 injunctive relief to protect the Private Information that remains in the hands of Defendant
 24 following the Data Breach, statutory damages under the California Confidentiality of Medical
 25 Information Act, Cal. Civ. Code § 56, *et seq.*, California Consumer Privacy Act, Cal. Civ. Code
 26 §§ 1798.100, *et. seq.*; Alaska Personal Information Protection Act, Alaska Stat. §§ 45.48.010, *et*

1 *seq*; Alaska Consumer Protection Act, Alaska Stat. §§ 45.50.471, *et seq*; Colorado Consumer
 2 Protection Act, Colo. Rev. Stat. §§ 6-1-101, *et seq.*; and New York General Business Law, N.Y.
 3 Gen. Bus. Law §§ 349, *et seq.*, and damages flowing from Defendant's alleged negligence, breach
 4 of implied contract, breach of fiduciary duty, and invasion of privacy. The precise calculation of
 5 damages is subject to expert testimony and investigation.

6 **DEFENDANT'S POSITION**

7 Defendant believes that Plaintiffs will be unable to prove statutory damages under the
 8 California Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et seq.*, California
 9 Consumer Privacy Act, Cal. Civ. Code §§ 1798.100, *et. seq.*; Alaska Personal Information
 10 Protection Act, Alaska Stat. §§ 45.48.010, *et seq*; Alaska Consumer Protection Act, Alaska Stat.
 11 §§ 45.50.471, *et seq*; Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101, *et seq.*; and
 12 New York General Business Law, N.Y. Gen. Bus. Law §§ 349, *et seq.*, and damages. Further,
 13 Defendant acted reasonably at all times, and thus, Plaintiff will be unable to prove negligence.
 14 Plaintiffs did not suffer any damages. Plaintiffs cannot show any breach of contract or fiduciary
 15 duty, as Defendant was never a fiduciary. Finally, Plaintiffs will be unable to show any intentional
 16 act on the part of Defendant. A Joinder Complaint has been filed against the threat actor
 17 responsible for the criminal act. Nonstop was a victim of Conor Brian Fitzpatrick.

18 **12. SETTLEMENT AND ADR**

19 The Parties will meet and confer in compliance with Civil Local Rule 16-8 and ADR Local
 20 Rule 3-5. In the event the Parties agree that ADR is appropriate, the Parties will select private ADR
 21 and promptly inform the Court.

22 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

23 The Parties did not consent to referral to a magistrate for all purposes.

1 **14. OTHER REFERENCES**

2 At this time, the Parties do not believe the case to be suitable for reference to binding
3 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

4 **15. NARROWING OF ISSUES**

5 At this time, the Parties have not identified any issues that can be narrowed by agreement
6 or motion but remain open to meeting and conferring regarding the potential narrowing of issues
7 once this case proceeds beyond the pleading stage.

8 **16. EXPEDITED TRIAL PROCEDURE**

9 At this time, the Parties do not believe the case is suitable for expedited trial.

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17. SCHEDULING**JOINT POSITION**

Event	Proposed Deadline
Deadline to amend/add parties	February 20, 2024
Class Primary Expert Disclosures	June 13, 2024
Class Rebuttal Expert Disclosures	August 1, 2024
Last day to file class <i>Daubert</i> motions	October 24, 2024
Last day to file Motion for Class Certification	December 2, 2024
Opposition to Motion for Class Certification	February 3, 2025
Reply in Support of Motion for Class Certification	March 3, 2025
Hearing on Motion for Class Certification	Court's Discretion
Simultaneous Merits Expert Disclosures	February 7, 2025
Discovery cutoff	March 28, 2025
Last day to hear file Motions for Summary Judgment and Merits <i>Daubert</i> Motions	May 15, 2025
Last day to file Oppositions to Dispositive and Merits <i>Daubert</i> motions	June 16, 2025
Last day to file replies to Dispositive and Merits <i>Daubert</i> motions	August 8, 2025
Final Pretrial Conference	September 11, 2025
Trial	September 22, 2025

18. TRIAL**JOINT POSITION**

The Parties request trial by jury. At this time, the Parties anticipate approximately ten days of trial.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The Parties will file a "Certification of Interested Entities or Persons" prior to the case management conference, reporting no such interested parties other than those named.

20. PROFESSIONAL CONDUCT

All attorneys of record are familiar with the District's Guidelines for Professional Conduct.

21. OTHER

PLAINTIFFS' POSITION

None at this time.

DEFENDANT'S POSITION

None at this time.

Dated: December 11, 2023

CIPRIANI & WERNER PC

By: /s/ Jill H. Fertel
Jill H. Fertel, Esq.

Counsel for Defendant

Dated: December 11, 2023

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ATTESTATION

I, Antima Chakraborty, Esquire, hereby attest, pursuant to N.D. Cal. Civil Local Rule 5-1(h)(3), that concurrence to the filing of this document has been obtained from each signatory.

/s/ Antima Chakraborty

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